

### **REMARKS/ARGUMENTS**

Reconsideration is respectfully requested of the Official Action of September 21, 2009, relating to the above-identified application.

The claims in the case are Claims 1, 2 and 4.

The rejection of Claim 1 as allegedly anticipated under 35 U.S.C. § 102(b) in view of the European patent of *Ettlinger, et al.* (EP 0672731), is traversed and reconsideration is respectfully requested. The European patent of *Ettlinger* is owned by the same assignee as in the present application.

The Official Action takes the position that the European patent of *Ettlinger* anticipates the claimed subject matter. However, applicants wish to point out that the claims of the present application require that the silanized structure modified silica is structurally modified. No structural modification is shown in the *Ettlinger* European patent.

To further substantiate and establish this fact, filed herewith is a Declaration by Jürgen Meyer, one of the co-inventors named in this application and who is also an inventor named in the European patent as shown by the first page of same attached hereto. Dr. Meyer clearly states on page 2 of the enclosed Declaration, after establishing that he is completely familiar and knowledgeable with respect to the content of the European patent as well as the above-identified application, that the subject matter of the European patent "...did not relate to a structurally modified silica and does not disclose a structurally modified silica and does not contemplate a composition containing a structurally-modified silica".

Dr. Meyer clearly states that the conclusion in the Official Action as to the European patent disclosing a structurally modified silica is technically incorrect and is in error.

It should also be noted that the *Ettlinger* patent was identified in the Information Disclosure Statement filed on April 13, 2005, and was considered by the Examiner more than two years ago as indicated in the Official Action of October 2, 2007. Applicants have therefore

been prejudiced because two years have now elapsed in the term of any patent which may ultimately issue in this case. Applicants request that the rejection be withdrawn and that the application be immediately allowed.

For the same reasons, applicants traverse the rejection of Claim 4 under 35 U.S.C. § 103(a) as unpatentable over *Ettlinger*, European Patent 0672731, further in view of *Koehlert*, US 5,928,723. The fact remains that neither of the references show a structurally modified silica product and consequently, the rejection does not establish *prima facie* obviousness of the claimed invention.

Prompt action at the Examiner's earliest convenience is respectfully requested.

Respectfully submitted,

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